



IN THE MATTER OF:

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In the underlying Charge of Discrimination, Complainant asserted that she was the victim of sexual harassment when Respondent Hayes subjected her to a series of sexually offensive remarks, sexual advances, and sexual innuendoes. Complainant contended during the public hearing that she suffered lost wages and certain emotional damages arising out of the harassment that she endured in the workplace.

### **Findings of Fact**

Based upon the record in this matter, I make the following findings of fact:

1. In October of 1999, Complainant was hired by Respondent Bethalto Depot to work as a waitress.
2. At all times pertinent to Complainant's Charge of Discrimination, Complainant worked forty hours per week over a period of five days. At all times during this period Complainant made four dollars per hour and averaged \$30.00 per day in tips.
3. From October of 1999 to January 28, 2000, Respondent Andrew J. Hayes, who owned Bethalto Depot, made a series of sexually offensive remarks. While Complainant protested these remarks, Hayes continued to make sexually suggestive comments.
4. At some point between October of 1999 and January 28, 2000, Hayes offered Complainant cash to perform sexual acts.
5. At some point between October of 1999 and January 28, 2000, Hayes threatened to photograph Complainant while she was using the women's bathroom. This threat caused Complainant to have problems with her bladder as she restricted her use of the women's bathroom.
6. On February 4, 2000, Hayes brought Complainant into his private office, exposed his penis and attempted to make Complainant touch his penis.
7. Complainant quit Bethalto Depot shortly after the penis exposure incident because Complainant's work environment had become so hostile and discriminatory that she had no alternative but to resign.
8. Complainant began to look for work shortly after she left Bethalto Depot, but did not find employment until November 6, 2000, when she took a position at APAC. At APAC, Complainant made more money than she had been making at Bethalto Depot.

9. During the period of unemployment after her constructive discharge from Bethalto Depot, Complainant lost a total of \$6,240 in back wages and \$5,850 in tips. During this same time period, Complainant received unemployment compensation totaling \$2,288.

10. Complainant suffered emotional damages in the amount of \$20,000.

11. Attorney John A. Sholar represented Complainant in this matter throughout the proceedings in the Department of Human Rights and before the Commission.

12. Mr. Sholar currently practices law in the Alton, Illinois area, after having graduated from Southern Illinois University School of Law in 1998. Mr. Sholar's usual and customary rate for legal services rendered is \$125.00 per hour. The reasonable hourly rate for Mr. Sholar for performing legal work in this matter is \$125.00 per hour.

13. The time charges submitted by Mr. Sholar indicate that Mr. Sholar expended 42.9 hours of work in this matter. The reasonable number of hours spent by Mr. Sholar in performing legal tasks in this matter is 42.9 hours.

14. Complainant is entitled to \$5362.50 in legal fees for services rendered in this matter.

15. On October 6, 2000, the Department of Human Rights mailed to Respondents a Notice of Default for their failure to file a verified response to the Charge of Discrimination.

16. On January 24, 2001, the Department of Human Rights filed with the Human Rights Commission a petition to determine Complainant's damages. On February 28, 2001, the Commission granted the Department's petition and transmitted the matter to the Administrative Law Section for a hearing on Complainant's damages.

17. Neither Respondent appeared at the public hearing or filed a post-hearing brief as to the merits of Complainant's request for damages or for attorney fees.

### **Conclusions of Law**

1. Complainant is an “employee” as that term is defined under the Human Rights.
2. Respondent Bethalto Depot is an “employer” as that term is defined under the Human Rights Act and was subject to the provisions of the Human Rights Act.
3. Respondent Andrew J. Hayes is an “employee” and a “person” as those terms are defined under the Human Rights Act and was subject to the provisions of the Human Rights Act.
4. As a consequence of the default order entered on February 28, 2001, all of the allegations contained in Complainant’s Charge of Discrimination are deemed admitted.
5. A prevailing complainant may receive reasonable attorney fees to maintain her action.

### **Discussion**

On February 28, 2001, the Commission entered an Order finding Respondents to be in default on the issue of liability due to their failure to file either a verified response to the Charge of Discrimination or a Request for Review of the Department’s Notice of Default. The allegations in the Charge of Discrimination indicate that Respondent Hayes subjected Complainant to a four-month pattern of unwelcome sexual comments and sexual innuendoes, as well as to certain unspecified requests by Hayes for sexual encounters in exchange for cash. Complainant also asserted in her Charge that Hayes exposed his penis to her in his office and threatened to place a camera in the women’s bathroom. These incidents establish a hostile work environment and support Complainant’s claim that she was constructively discharged as a result of Hayes’ conduct.

As to Complainant's claim for damages, Complainant testified that Hayes' conduct caused her to become depressed and physically ill, and that it caused her relationships with her fiancé and her son to deteriorate.<sup>1</sup> Complainant additionally asserted that when she pressed criminal charges against Hayes after she left Bethalto Depot, she became frightened for her personal safety since the local police relayed to her that Hayes was a dangerous individual with a criminal background that involved the killing of a man as well as the sexual abuse of children.<sup>2</sup>

While it is clear that Complainant endured some emotional damages, she did not establish emotional damages in the requested amount of \$200,000. Specifically, the record contains no evidence that Complainant had sought or will be seeking professional psychiatric care for her emotional distress, and I would note that Complainant did not fear for her personal safety until after she left the Bethalto Depot. Indeed, outside of the penis incident mentioned in the Charge, Complainant did not testify to any incident in which Hayes physically threatened her while she was still employed at the Bethalto Depot. Accordingly, based on the allegations of verbal harassment over a four-month period, as well as one incident of Hayes exposing his penis to Complainant, I find that Complainant is entitled to emotional damages in the amount of \$20,000.

As to Complainant's claims for back wages and tips, I find that Complainant has established that she suffered a loss of \$11,090 in lost wages and tips. However, Respondent is entitled to a set-off of \$2,288 in the form of unemployment compensation benefits Complainant received during the time she was looking for work. In **Brown and Cresco Lines, Inc.**, 46 Ill. HRC Rep. 184 (1985), the Commission further refined this

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<sup>1</sup> Complainant's counsel provided in Complainant's post-hearing brief more details surrounding Hayes' propositions for sex, as well as a purported incident in which Hayes fondled Complainant's breasts that was not mentioned in the Charge, but I could not consider these facts since they were not contained in Complainant's testimony.

<sup>2</sup> Hayes ultimately entered an Alford plea on charges of sexual abuse arising out of Complainant's allegations against him and received a sentence of one-year probation.

analysis by holding that a complainant would be entitled to reimbursement of the set-off if the Department of Labor required the complainant to pay back the unemployment compensation that she had received. Accordingly, my recommendation recognizes a set-off in favor of Respondents for unemployment compensation that Complainant received, but directs Respondents to pay back to Complainant any amount of the set-off that she is required to refund to the Department of Labor. Finally, I note that Complainant has not requested to be reinstated to the Bethalto Depot, and thus Respondents will be not directed to do so.

As to the issue of attorney fees, Complainant's counsel submitted an affidavit indicating that: (1) he spent 42.9 hours investigating and prosecuting this claim; and (2) his usual and customary rate for legal services is \$125.00 per hour. I have examined the itemized list of services and find them to be reasonable. Moreover, I note that neither Respondent has filed an objection to the fee petition. Accordingly, my recommendation grants Complainant's petition for fees in full.

### **Recommendation**

For all of the above reasons, I recommend that the Commission enter an Order which:

1. Directs Respondents to jointly and severally pay Complainant the sum of \$9,802 in back wages and lost tips. Should the Complainant be required by the Department of Labor to pay back the unemployment compensation of \$2,288 that she received, she should notify Respondents of this requirement. Within 30 days after this notification, Respondents shall tender a check to the Complainant for the amount of unemployment compensation refunded to the State.

2. Directs Respondents to jointly and severally pay Complainant the sum of \$20,000 representing Complainant's emotional damages.

3. Directs Respondents to jointly and severally pay Complainant prejudgment interest at the rate and manner as set forth in section 8A-104(J) of the Human Rights Act (775 ILCS 5/8A-104(J)).

4. Directs Respondents to jointly and severally pay Complainant the sum of \$5,362.50 representing Complainant's attorney fees.

5. Directs Respondents to cease and desist from sexual harassment.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL R. ROBINSON  
Administrative Law Judge  
Administrative Law Section

ENTERED THE 13TH DAY OF MARCH, 2002